

COMMISSIONERS APPROVAL

FOSS 

CHILCOTT 

IMAN 

STOLTZ 

BURROWS 

Members Present.....Commissioner Suzy Foss, Commissioner Greg Chilcott, Commissioner J.R. Iman, Commissioner Ron Stoltz and Commissioner Jeff Burrows

Date.....November 27, 2012

► Minutes: Glenda Wiles

► The Board met at 9:00 a.m. with Extension Agents Katelyn Anderson and Ralph Johnson for an update on activities and approval of the yearly Extension Agreement with Montana State University. Ralph presented a power point presentation on the activities he is involved in. Katelyn indicated most of her activities are 4-H related and due to the time she could present at a later date. (See attached).

Katelyn presented the annual agreement for approval and signatures. **Commissioner Iman made a motion to continue financial sponsorship of the Extension Program within Ravalli County by signing the Extension Agreement. Commissioner Chilcott seconded the motion and all voted "aye". (5-0).**

► The Board met at 9:45 a.m. for administrative matters as follows:

- Approval of Shell Energy Confirmation - for delivery and supply of natural gas (this is a continuation of the natural gas delivery and supply). **Commissioner Chilcott made a motion to approve of this confirmation/contract with Chair signature. Commissioner Burrows seconded the motion and all voted "aye". (5-0)**
- Discussion of board openings for interview. The Board concurred they want to interview all applicants which include those re-applying for boards.

► The Board met at 9:55 a.m. with Human Resource Director Robert Jenni for an update. Robert is setting dates for the Employee Health Fair which will include Blue Cross/Blue Shield representatives. Robert also presented Employee Action Forms for signature.

► The Board met at 10:05 a.m. with Chief Financial Officer Klarryse Murphy for an update. Robert Jenni was present for a portion of this meeting to discuss comp time accrual for a retiring employee, future use of the employee's private business for certain county issues that he has specific knowledge and experience in. The Commissioners concurred they will probably need to enter into an agreement for services on some maintenance issues.

Glenda brought forth a request from Under Sheriff Perry Johnson to install a new heater in the Sheriff's Reserve Building on Fairgrounds Road. The research from RM Plumbing and Heating, Inc. bears out that a 75,000 BTU furnace should be sufficient at a cost of \$767 plus \$200-250 for parts and installation. The cost if approved would come from the capital purchase line. Under Sheriff Johnson was placed on conference call to discuss the use of the building. Klarryse stated she will set up a specific budget line on this Reserve Building. **Commissioner Chilcott made a motion to approve the 75,000 BTU heater at a cost of \$767.00 plus \$200-250 for parts to be taken from the Sheriff's Capital Reserve line item. Commissioner Burrows seconded the motion and all voted "aye". (5-0)**

► Commissioners Foss and Stoltz travelled to Kalispell to visit with other Elected Officials for a meet and greet and to discuss county policies.

► The Board met at 11:00 a.m. to discuss and make a decision to vacate Resolution No. 1372 (Resolution providing for public participation) and to adopt a new Resolution which provides for public participation. (This meeting was continued from November 21, 2012). Present was Deputy County Attorney Howard Recht. Discussion included language that vacates the previous Resolution No. 1372, and replaces it with Resolution No. 2979.

Public comment was called for:

Bitterroot Star Publisher Michael Howell expressed concern about the minimum requirement of posting on the bulletin board, and that it does not meet the requirements of the law. For example, if the calendar is posted at 4:55 p.m. on a Friday in the hallway at the Administrative Center and the building is then closed for the weekend, and a Monday morning meeting is held, the 48 hour notice is not being met as no members of the public have access to the building.

Michael also asked if the attachment to the Resolution is a policy. Attorney Recht stated this is a Resolution that represents what the county policy is by way of the attachment. Michael also asked about the Commissioners reviewing their policy under the settlement agreement issued by Judge Haynes. He would like to see a defined section on properly closing a meeting within the Resolution, of which the Judge has express language in his summary judgment. He suggests the Commissioners have a checklist to see if they should move into a closed session. This checklist would require the Commissioners to move through the considerations of each case and document it for the record. Case law is cited in the summary judgment which would then establish a record of how the Commissioners are balancing their decision of holding an open or closed meeting.

Commissioner Chilcott noted under Title 2, MCA, the Presiding Officer has the right to close the meeting when the right to privacy outweighs the public's right to know. Discussion included individual rights to privacy and public disclosure. Michael discussed the issue of the 'public trust' of an employee and the public's right to know.

Attorney Recht indicated the Commissioners will need to weigh these issues on individual cases. Case law exists and does address the 'public trust' such as an Elected Official with the public's

right to know. Judge Langton's decision was considered when the Public Participation, Meetings and Open Government policy was written by the County Attorney's Office (as attached to this proposed Resolution). Facts are important in order make a determination on the rights to individual privacy versus the public's right to know.

Commissioner Burrows stated after reading the Judge's decision he tends to agree with Michael in regard to a procedure for closing a meeting, i.e., the checklist. That discussion is then part of the record showing there is a right to privacy or not. Commissioner Chilcott stated he will always err on the side of the individual's right to privacy.

Public comment was now closed.

Commissioner Chilcott asked if there was any issues in the resolution that needed to be addressed. Section 3: Notice (b) appears to be adequate. Commissioner Burrows suggested a water tight bulletin board be placed outside of the Administrative Center so a citizen can see the agenda posted on Sunday morning in case they do not have access to the web site. Glenda indicated posting in the alcove at the top of the outside stairs at the Administrative Center could be a supplemental posting, done with minimal expense. Commissioner Burrows will look into some sort of board to post the agenda under plexi-glass or plastic.

Commissioner Iman made a motion to vacate Resolution No. 1372 and adopt Resolution No. 2979 which is a resolution providing for public participation, meetings and open government. Commissioner Burrows seconded the motion. Discussion: It was agreed to change the word "has" to "have" in the first whereas, last sentence. Commissioner Burrows made a friendly amendment to the original motion to change that one word in the proposed resolution as presented. Commissioner Iman accepted that friendly amendment. All voted "aye" to the amendment. (3-0) All voted "aye" to the original motion to adopt Resolution No. 2979. (3-0)

► The Board met at 2:30 p.m. to review and approve the Lost Horse Creek Conservation Easement Amendment Request. Present was Deputy County Attorney Dan Browder, Planner Kevin Waller, Bitterroot Conservation Director Gavin Rickleffs and Staff Kyle Barber.

Kevin presented a Request for Commission Action (as attached) noting the Planning Department has reviewed this request and recommends the Commissioners approve this proposed amendment to the Lost Horse Creek Conservation Easement.

Gavin noted this conservation easement was completed in 2009 and the county has specific rights within the Open Lands Bond funding, one of which is approval or denial of any amendments. He spoke to the fact that this amendment will not have any change in value, the Bitterroot Conservation feels this is a simple administrative change and will not change any original intent within the conservation easement. This amendment actually clarifies the landowners' property.

Attorney Browder stated he reviewed this request and sees no material issues. The request must come before the County which is part of the Open Lands Bond process.

Commissioner Burrows made a motion to approve the Request for Commission Action for the Lost Horse Creek Conservation Easement Amendment Request as presented today. Commissioner Iman seconded the motion. Kyle indicated there will be a new boundary line adjustment. Commissioner Iman made a motion to make a friendly amendment to the original motion noting there will be a new boundary line adjustment. Commissioner Burrows accepted that friendly amendment. All voted "aye". (3-0). All voted "aye" to the original motion. (3-0).

► The Board met at 3:00 p.m. to have a discussion and make a possible decision on the use of CTEP funds for the Fairgrounds Road Improvement. Present were City of Hamilton Staff Dennis Stranger, Hamilton Mayor Jerry Steele, WGM Engineer Jonathan Gass, and WGM Staff (Engineer) Jeff Smith.

Dennis presented an update on the Fairgrounds Road Project which included the concept of the shared use path from Kurtz Lane to Old Corvallis Road at a anticipated cost of \$600,000. The construction for the road will end up at approximately 2.7 million dollars. The construction will include two phases, from Kurtz to North Daly and from North Daly to Old Corvallis Road. They hope to bid in the early spring. Two issues to address with the City is the use of one year's worth of Ravalli County CTEP funding which was agreed upon in 2006. The agreement in 2006 included the development of a Special Improvement District (SID) by the City, however the City would like to amend the Interlocal Agreement of 2006 and remove the requirement of a SID. Secondly the City will need right of way from the county (in front of the fairgrounds and road department) in order to build the shared use bike path (which will be separate from the road).

Dennis noted the City has held multiple meetings with the public including the neighborhood residents as well as an informational booth set up at the fair in August. According to Dennis, Fairgrounds Road is the most heavily used road in the entire county, so it is a well traveled road used by county and city residents.

Commissioner Chilcott addressed the right to protest on the Fairground Improvement (gate and frontage) and that CTEP funds would be given when the construction begins as part of the original discussion in 2006. If the city is considering changes such as assessment on county property, then Commissioners must consider the use of Ravalli County CTEP money. Dennis stated they do not plan on making any assessment on county property that would affect the fairgrounds and the frontage on Fairgrounds Road. Commissioner Chilcott also noted the right of way to be donated has some value to this project as well (15' easement).

Commissioner Iman felt the sidewalk does not need to be separated from the road, it could be attached with a curb separation from the road way. A good example is Highway 93 on the west side of the road (which has no separation). If the county is going to donate a substantial portion of funding to this project, the county would like a say in the engineering, and up to this point have not been allowed any input (the plans already being submitted and approved by CTEP without any County input).

Dennis stated they are building the sidewalk first, then they will build the road later. It is safer to separate the path from the road as well as being aesthetically pleasing. The design of the road has been approved by the Hamilton City Council.

Commissioner Chilcott noted the way the City designed the path, it actually takes property from the Fairgrounds.

Jonathan Gass stated one reason the sidewalk location was done this way is in order to construct the sidewalk first which will save money. Secondly, previous plan recommendations brought them to this design (for the boulevard). The road is offset in the existing right of way and the fairgrounds fence is not the right of way line, it is 10-12' inside the fairgrounds property.

Commissioner Iman stated this is significant to the county as the county removed trees, and moved other trees north into the fairgrounds, as well as moved the fence. To give an additional 15' of right of way on this north side is worth value. He sees a distinct advantage to getting one side of the road done, then the other side.

Dennis stated moving the fence is in their cost estimate, so it would not cost the county anything. Commissioner Iman stated the county cost would be losing the land within the fairgrounds parcel. He asked if the boulevard could have different widths on both the north side and south side which could save not only money but use of the fairgrounds land. Jonathan stated the final design tweaks can be done at the time of final design, which could save 2-3' by narrowing the boulevards. However, as they perform the engineered plans they take into account the road design, daily traffic, etc., and to provide as much separation as possible from the road (for safety sake) instead of having a curb road design.

Commissioner Iman stated he prefers to keep the fairgrounds fence, especially the new trees that came from private funds.

Commissioner Chilcott asked Glenda Wiles (CTEP Administrator) about the funds deposited into the Ravalli County account from the State of Montana. Glenda indicated the county's allocation in November 2011 was \$217,254. November 2012 funds were just noticed in the amount of \$204,335.00. She noted this 2012 funding allocation will be the last one under the current CTEP Program. A new Transportation Bill (MAP-21) recently enacted by Congress will bring changes to the CTEP program. The local program will be entitled the Transportation Alternatives (TA). It is unknown at this time how the TA Program will work with local counties.

Dennis stated they would need to change the Interlocal Agreement removing the requirement for the SID. They will review the portion of the Fairgrounds property with the Engineers to see if some changes can be done there, but he asked what the position of the county is in regard to the frontage at the Road Department and Search and Rescue Building.

Commissioner Chilcott stated the county does not want to get hit with any assessments as they too have to provide benefits to the county taxpayers, particularly by giving up county property plus a year's worth of CTEP dollars.

Mayor Steel stated they will discuss this meeting with other city staff and come back for another discussion and decision.

Dennis stated if they do form an SID they could pay the county for the right of way then asses the county for the construction. He stated the neighborhood residents voiced the opinion that they only want a SID if the county is part of the district.



REQUEST FOR COMMISSION ACTION

OG-12-11-279

BCC Meeting: Tuesday, November 27, 2012 – 2:30 PM

Subject: Lost Horse Creek Conservation Easement Amendment Request

I. Action Requested

This is a request from Stan and Sherry Swartz, owners of the Lost Horse Creek Conservation Easement properties, to adjust a common boundary line between two properties within the easement boundaries. The Bitter Root Land Trust is the sponsoring agency. The subject properties are identified as Parcel #1212920 and Parcel #1237630.

II. Applicable Regulations

- Resolution 2020, recorded as Document #582135 on December 26, 2006, established the Ravalli County Open Lands Board, and its composition.
- Resolution 2256, recorded as Document #597638 on December 6, 2007, established the Ravalli County Open Lands Bond Program.

III. Background

- OLBP funding for the Lost Horse Creek Conservation Easement, in the amount of \$409,000.00, was conditionally approved by the BCC on September 28, 2009 (Resolution #2417).
- The BCC approved the allocation of the above amount on December 23, 2009, after finding the final documents sufficient under the application procedures.
- The BCC conditionally approved a Correction Deed of Conservation Easement, and revised MOU, on November 30, 2010. Specifically, the landowners and BRLT wished to alter the terms of the conservation easement, due to developments in tax law affecting conservation easements, particularly the tax court case *Kaufman vs. Commissioner* (2010) 134 TC No. 9.
- The Planning Department preliminarily approved a Boundary Line Relocation (File # SEA 2012-44) on October 4, 2012, between the above-referenced properties, within the Conservation Easement boundaries.
- The current amendment request, submitted by BRLT, states that the boundary relocation will follow an existing roadway and fenceline, which will help to avoid third party trespass, and allow BRLT monitors to more easily observe property boundaries.
- A June 7, 2012 letter from the original appraiser of the conservation easement, attached, states that the proposed amendment will have no effect on the property or conservation easement value.

IV. Planning Staff Recommendation

The Planning Department has reviewed the request, and recommends that the BCC approve the proposed amendment to the Lost Horse Creek Conservation Easement.

Attachments: Amendment Request Narrative, Aerial Photo, Appraiser Letter, Deputy County Attorney Recommendation, Landowner Request Letter, Boundary Relocation Preliminary Plat
Staff: *KW* Kevin Waller
Date: November 27, 2012
Cc: Bitter Root Land Trust, Stan and Sherry Swartz (both parties w/out attachments), Conservation Easement File, Outgoing Mail File

We hereby **Approve** ~~Deny~~ the proposed amendment to the Lost Horse Creek Conservation Easement.

BOARD OF COUNTY COMMISSIONERS

Suzy Foss, Chairman

Greg Chilcott, Member

J. R. Iman, Member

Jeff Burrows, Member

Ron Stoltz, Member

Lost Horse Creek Conservation Easement - Amendment Request

November 20, 2012

Overview

Stan & Sherry Swartz, owners of Lost Horse Creek Ranch, have requested an amendment to their conservation easement. As the easement currently stands, the property may be split and separately sold as two individual tracts (along the hashed yellow line on the attached map). The owners would like to adjust roughly 500 feet of this internal line to follow an existing road on the property (red hashed line).

The requested boundary line adjustment is for an internal property line, meaning there would be no change to the total easement acreage. The adjustment will, however, re-allocate approximately one (1) acre from one tract to the other. This re-allocation will not impact the existing residences, the reserved building envelope or any other reserved rights.

Impact to Conservation Values

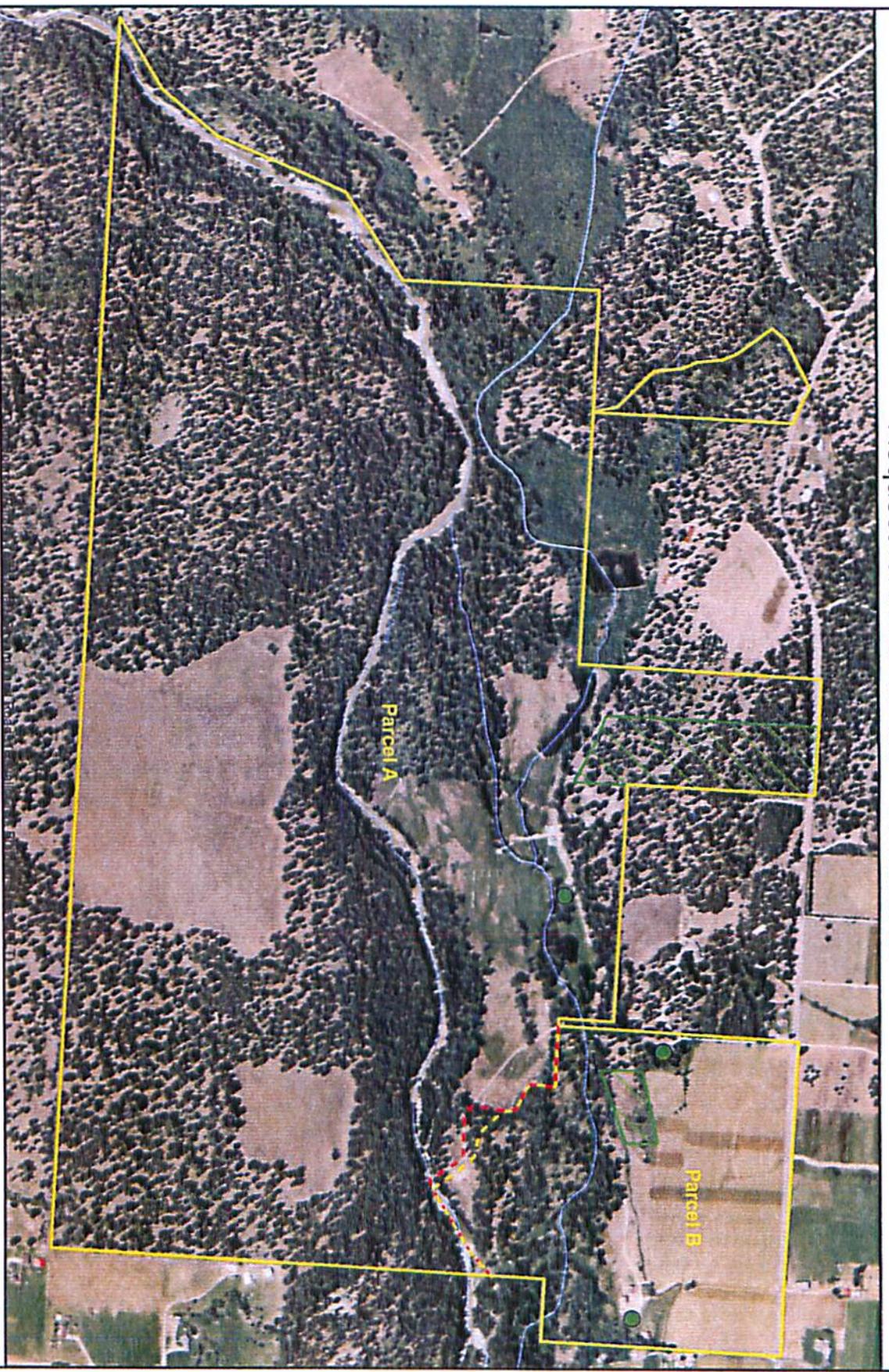
From BRLT's perspective, this amendment will not negatively impact the conservation values protected in the easement. In fact, realigning the internal boundary to an existing road will likely enhance BRLT's ability to uphold the conservation values over time. A clear property line along an existing road helps avoid third party trespass and makes it easier for BRLT monitors to observe the property. Andy Dana, BRLT's attorney, confirmed this assessment.

Private Benefit

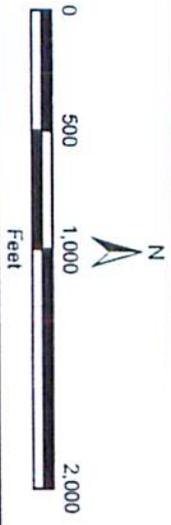
After careful review, BRLT Board and staff found no evidence of impermissible private benefit associated with this amendment. BRLT's attorney agreed but recommended obtaining a private benefit analysis from a qualified appraiser. On June 7, 2012, staff obtained a letter from Tom Stevens, the original appraiser for this conservation easement, detailing the proposed amendment's impact on the easement value. In his letter, Tom concludes that proposed internal boundary adjustment would not impact the property or conservation easement value (see attached letter).

Lost Horse Creek Conservation Easement

Request for Amendment -- 11.20.2012



- Legend**
- Lost Horse CE Boundary
 - Existing Split Line
 - Amended Split Line
 - Existing Residence
 - Reserved Residential Bldg Site



STEVENS & CO.

A REAL ESTATE APPRAISING & CONSULTING GROUP

June 7, 2012

Mr. Kyle Barber
Bitter Root Land Trust
kyle.barber@bitterrootlandtrust.org

RE: Swartz
Lost Horse Creek Conservation Easement

Kyle:

I have reviewed the requested re-alignment of the conservation easement boundaries as proposed by Stan and Sherry Swartz. Additionally I have reviewed in part, my appraisal on the conservation easement which I prepared for the Swartz.

It is my opinion that the boundary re-location that is proposed will have no effect on the value of the property nor diminish the value of the conservation easement. It would be my recommendation that the Land Trust agree to the boundary re-location as proposed.

Please feel free to contact me if you have any questions.

Regards,



Thomas G. Stevens, MAI

Kevin Waller

From: Dan Browder
Sent: Friday, June 08, 2012 1:11 PM
To: Kyle Barber; Kevin Waller
Subject: RE: Lost Horse Amendment Request
Attachments: [Swartz] 2012 Division Line Amendment - Ravalli County Review Packet.pdf

Kyle,
I don't see any legal issues from my end and would advise the commissioners to approve the amendment as it currently appears.
Dan

From: kylebarbe@gmail.com [<mailto:kylebarbe@gmail.com>] **On Behalf Of** Kyle Barber
Sent: Friday, June 08, 2012 12:18 PM
To: Dan Browder
Subject: Lost Horse Amendment Request

Hi Dan,

I hope you're well. We received an amendment request for the Lost Horse Creek Ranch Conservation Easement. The request comes from Stan and Sherry Swartz, current property owners and original easement grantors. Attached is a summary of the proposed amendment, including a narrative, map and appraisal letter. Once we've reached agreement in concept, I will pull together draft language for the amendment. If there is anything else that you need from me in the meantime, just let me know.

Kyle

To, Bitterroot land trust

We are requesting a boundary adjustment that would aid boundary identification between the two parcels of the Lost Horse conservation easement, with less confusion for both potential landowners and the land trust in the future.

The adjustment would follow the existing fence line and surveyed line to the road, thence along road to the Lost Horse Bridge, (see map) the total acreage involved would be \approx one acre.

May 3rd 2012
George H. Klemm